

1969  
Nov. 28

[TRIANTAFYLIDIS, J.]

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LEFKI  
NICOLAOU  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKI NICOLAOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMANDER OF POLICE,

*Respondent.*

(Case No. 21/69).

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*Police—Acting appointment of a female police constable as a sergeant—Appointment made pursuant to a policy decision—Termination of such appointment made in ignorance of the existence of such policy—Consequently, said termination decided upon under a misconception as to a material consideration—Thus being the product of a defective exercise of the relevant discretionary powers—Annulled.*

*Administrative act or decision—Done or taken under a misconception of material consideration—Product of defective exercise of the discretionary powers vested in the Respondent—Null and void—See, also, supra.*

*Discretionary powers—Defective exercise of—Decision taken under a misconception as to a material consideration—See supra.*

*Misconception as to a material consideration—See supra.*

The facts sufficiently appear in the judgment of the Court annulling the *sub judice* decision on the ground that it was taken under a misconception as to a material consideration.

**Recourse.**

Recourse against the decision of the Respondent to terminate Applicant's appointment as acting sergeant in the Police.

*L. Papaphilippou*, for the Applicant.

*A. Frangos*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:

TRIANAFYLLIDES, J.: In this case the Applicant complains against the termination of her appointment as acting sergeant in the Police.

Such termination was announced by means of the Weekly Orders of the Police dated the 30th December, 1968 (see *exhibit 2*), with effect as from the 1st January, 1969. In the same Orders there was announced the termination of the appointment as an acting sergeant of Vr. Georghiadou, who was, also, posted at the time in the Nicosia Police Division, like the Applicant.

From records before the Court (*exhibits 6 and 7*), as well as from the Opposition, it appears that the Applicant was appointed as an acting sergeant in March 1965. Her appointment was made pursuant to a policy decision according to which a female acting sergeant should be in charge of the female police constables in each Police Division; at the time the Applicant was posted, for the purpose, in Nicosia, and Georghiadou in Limassol.

The termination of the appointment of the Applicant occurred as follows:-

On the 12th December, 1968, the Police Divisional Commander, Nicosia, was asked, on behalf of the Commander of Police, to state whether the acting appointments of the Applicant or of the aforementioned female acting sergeant, Vr. Georghiadou—who had been transferred to Nicosia from Limassol—or of both, should be terminated (see the correspondence *exhibit 3*).

The Divisional Commander replied, on the 16th December, 1968, that both acting appointments should be terminated; because there were no duties in the Nicosia Police Division which they could carry out in the capacity of sergeant.

It was decided accordingly, on the 18th December, 1968, to terminate the acting appointments of both the said female acting sergeants and as a result the document of the termination of the acting appointment of the Applicant was signed on the 20th December, 1968, with effect as from the 1st January, 1969.

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It was, however, discovered, subsequently, towards the end of January, 1969, (see the documents *exhibit 4*) that the non-existence of any female acting sergeant in the Nicosia Police Division was contrary to the already mentioned policy as a result of which the acting appointments of the Applicant and of Georghiadou were originally made; as a result it was decided to reappoint as an acting sergeant the, by then, female police constable Georghiadou; and this was done with effect as from the 21st January, 1969.

As in this recourse the Applicant has not challenged the validity of the reappointment of Georghiadou, but only the termination of her own acting appointment, I need not examine the validity of the reappointment of Georghiadou, instead of the Applicant; and, so, I am not concerned with what took place after the termination of the acting appointments of both. I shall limit myself to the issue of the validity of the termination of the Applicant's acting appointment:

It is quite clear, from the foregoing, that such termination was made in ignorance of the existence of the relevant policy regarding female acting sergeants and that, therefore, the *sub judice* decision was reached under a misconception as to a material consideration, thus being rendered the product of a defective exercise of the relevant powers. Had the matter been decided on the proper basis and in its correct context then no doubt there would have been examined who of the two—the Applicant or Georghiadou—was the most suitable and consequently there would not have been terminated the acting appointments of both, as being unnecessary (see *exhibit 3*).

In the circumstances, there is no other alternative open to me than to declare the *sub judice* decision as being *null and void* and of no effect whatsoever. It is up to the appropriate authority in the Police to decide as to whether the acting appointment of the Applicant should be terminated, or, whether or not, in the light of existing requirements, the implementations of the spirit of the relevant policy renders it proper in the interests of the service—which are a primary consideration—to keep two female acting sergeants in the Nicosia Police Division, one of them being the Applicant.

Regarding costs I have decided to award Applicant £15 towards costs.

*Sub judice decision annulled.  
Order for costs as above.*